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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In re:) Case No. 17-14004-ABA
) Chapter 13
JOSEPH W. CRESCENZO,) Judge Andrew B. Altenburg, Jr.
)
Debtor.)
-----)

**UNITED STATES' OBJECTION TO
CONFIRMATION OF DEBTOR'S CHAPTER 13 PLAN**

The United States of America objects to confirmation of the debtor's Chapter 13 plan dated November 2, 2017, pursuant to 11 U.S.C. § 1324 (a), because the plan inadequately provides for the United States' secured and priority claims. The plan is therefore ineligible for confirmation under 11 U.S.C. § 1325 §§ (a)(1) and (5). In support of this objection, the United States avers as follows:

The Internal Revenue Service ("Service"), on behalf of the United States, filed an amended proof of claim for \$28,881.88, which consists of a \$10,950.00 secured claim, and a \$17,931.88 priority claim. No objection has been filed to the United States' claim. It is therefore deemed allowed. 11 U.S.C. § 502(a).

Section 1325 of the United States Bankruptcy Code sets out the requirements for confirmation of a debtor's Chapter 13 plan. Each plan must comply with all provisions of the Chapter 13 Bankruptcy Code. A plan that does not comply, must either be amended or face dismissal by the court. 11 U.S.C. § 1307 (c)(5).

I. The debtor's plan does not provide for the United States' priority claim.

Under section 1325(a)(1), a court shall confirm a plan only if the plan complies with all provisions of Chapter 13 of the Bankruptcy Code. Section 1322(a)(2) of the Bankruptcy Code requires that all claims entitled to priority under section 507 of the Bankruptcy Code be paid in full.

The United States has a priority claim by virtue of the debtor's unpaid trust fund recovery penalties¹ from the fourth quarter of 2012 through the fourth quarter of 2013 and the second and third quarters of 2014. This claim is entitled to priority under Section 507 of the Bankruptcy Code because it is a tax required to be collected or withheld for which the debtor is liable. *See* 11 U.S.C. §507(a)(8)(C). Therefore, the plan should not be confirmed because it does not provide for the United States' priority claim as required under 11 U.S.C. § 1322(a)(2).

II. Debtor's plans to adequately provide for the United States' secured claim.

The Debtor's plan also cannot be confirmed because his plan fails to adequately provide for the United States' secured claim. A Chapter 13 plan that provides for a secured claim must provide for the full value of such claim. 11 U.S.C. § 1325(a)(5).

¹ Trust Fund Recovery Penalties, although denominated as a penalty, are accorded priority status under § 508(a)(8)(C) as a tax that should have been withheld and paid over to the IRS. *See In re Mosbrucker*, 227 B.R. 434, 437 (BAP 8th Cir.), *aff'd* 198 F.3d 250 (8th Cir. 1999).

The United States has a secured claim of \$10,950.00. To satisfy the United States' secured claim, the Debtor proposes to pay a reduced a cram down amount of \$8,869. However, based on the debtor's Schedule B, he has the ability to pay the United States' secured claim in full. Therefore, the plan should not be confirmed.

WHEREFORE, the United States requests that the Court deny confirmation of the debtor's Chapter 13 plan.

Date: November 6, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2017, I electronically filed the foregoing OBJECTION TO CONFIRMATION with the Clerk of Court using the CM/ECF system, which will send notification of such filing to those registered to receive it.

/s/ Erin F. Darden _____
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